

REMARKS

The present invention pertains to producing a workable dough by the use of specific pregelatinized, amylose-containing starch. Such doughs are characterized by specific rheological properties, including an extension of between about 9 to about 12 mm.

Claims 2-12 and 17-21 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Cremer (US 4,109,024). Cremer discloses an edible product made with dehydrated potatoes which can be made into French fries. One skilled in the art would not expect a French fry “dough” to be extensible such that it would be workable, e.g. capable of sheeting. Applicants would like to point out that French fries made with an extensible dough would conventionally be undesirable and that the industry standard would be a softer, flakier texture.

To further support Applicants’ contention that the Cremer “dough” would not be extensible, Applicants previously submitted a declaration under rule 132. Under the supervision and guidance of David Huang, the dough of Cremer’s example has been compared to the dough of the present invention. As can be seen from the pictures within the declaration, the Cramer dough is extremely crumbly and unworkable, and thus could not be sheeted. The extensibility of the dough could not be measured as it was too crumbly. In contrast, the dough of the present invention, when exposed to the same mixing conditions, was capable of extension and sheetable. Mr. Huang concludes from this that the Cremer dough differs from that of the present invention because it is not extensible. Thus, it is clear from the declaration that the Cremer dough differs from that of the present invention and the rejection under 35 U.S.C. § 102(b) has been overcome.

The Examiner found the declaration to be unpersuasive. The Examiner did not find it clear if the same reference was intended because the reference used in the rejection was Cremer, not Cramer. The declaration has been amended to correct this typographical error and is enclosed herewith for reconsideration.

The Examiner also did not find the declaration persuasive since, as the declaration does not set forth the composition of the testing dough, it cannot be determined if the same composition is used as set forth in Example I of Cremer. The declaration states that the potato blend was made according to Example I of Cremer, making it clear that it was such composition. Applicants assume this statement was further argument against the typographical error as there is no requirement for the actual composition to be listed.

The Examiner also states the showing is not commensurate in scope with the claims. The declaration is used to overcome the rejection in view of Cremer, to show that Cremer would not fall within the claims of the present invention. According to current patent practice, this is done by showing the closest example of the prior art. This has been done. There is no requirement that testing of Applicants invention be commensurate with the claims, merely that the prior art example does not fall within the claims.

The Examiner further states that the dough as set forth in example 2 contains 55% masa harina and 35% water, but the dough as claimed does not recite any of these components. The claims are directed to a

process for making a dough comprising adding an amylose-containing starch, dough comprising the amylose containing starch, and food made with such dough. The claims are not limiting, ie. they do not claim a process, dough or food in which the only ingredient is amylose-containing starch. Instead, the claims are open ended, using the transition "comprising" and thus the dough may contain masa harina and water as well.

Finally, the Examiner states that the declaration does not present any evidence to show that the extension of the testing dough cannot be measured. One skilled in the art can tell whether or not a dough will be extensible. To be extensible, the dough cannot be crumbly and fall apart easily. Further, the Examiner has provided no reasoning why the declarant's statement should not be believed.

Therefore, the declaration, as amended, is sufficient to overcome the rejection.

Claims 8-10 and 17-19 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Mitchell, et al. (US 4,362,755). These claims were cancelled in the Amendment After Final submitted 10 November, 2004, mooted this rejection.

Claims 13-16 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Cremer (US 4,109,024) in view of Mitchell, et al. (US 4,362,755). Cremer does not teach or disclose the presently claimed invention in that, *inter alia*, the Cremer dough is not extensible. Mitchell does not cure this deficiency. Mitchell discloses a process for preparing a pregelatinized modified starch for use in instant puddings. The starch is used as it possesses a smoother, creamier mouthfeel and a high sheen. There is no teaching or disclosing to use such starches to produce a dough, much less that such dough would be workable and extensible. Thus, the rejection under 35 U.S.C. § 103(a) has been overcome.

Applicant submits the Application is now in condition for allowance and respectfully requests early notice to that effect.

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Respectfully submitted,



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